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United Nations

Report of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Ninth session
(24-28 November 2008)

Tenth session
(20 April-1 May 2009)

General Assembly

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Note

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

[22 October 2009]

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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Convention

1. On 1 May 2009, the closing date of the tenth session of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, there were 41 States parties to the International Convention on the Rights of All Migrant Workers and Members of Their Families. The Convention was adopted by the General Assembly in resolution 45/158 of 18 December 1990 and entered into force on 1 July 2003, in accordance with the provisions of its article 87, paragraph 1. A list of States that have signed, ratified or acceded to the Convention is contained in annex I to the present report.

B. Meetings and sessions

2. The Committee held its ninth session at the United Nations Office at Geneva from 24 to 28 November 2008. The Committee held 10 plenary meetings (CMW/C/SR.88-97). The provisional agenda, contained in document CMW/C/9/1, was adopted by the Committee at its 88th meeting, on 24 November 2008.

3. The Committee held its tenth session at the United Nations Office at Geneva from 20 April to 1 May 2009. The Committee held 20 plenary meetings (CMW/C/SR.98-117). The provisional agenda, contained in document CMW/C/10/1, was adopted by the Committee at its 98th meeting, on 20 April 2009.

4. The list of documents issued or to be issued in connection with the ninth and tenth sessions of the Committee is given in annex IV.

C. Membership and attendance

5. All members of the Committee attended the ninth session of the Committee. Mrs. Dieguez did not attend the tenth session of the Committee.

6. The list of the members of the Committee, together with an indication of the duration of their terms of office, appears in annex II to the present report.

D. Future meetings of the Committee

7. The Committee welcomes the authorization by the General Assembly that enables it to hold two sessions per year, one of two weeks and one of one week, which allows it to fulfil its functions more effectively.

8. The Committee will hold its eleventh session from 12 to 16 October 2009, at the United Nations Office at Geneva.

E. Participation in inter-committee meeting and working groups

9. Mr. Brillantes and Mr. El-Borai represented the Committee at the seventh inter-committee meeting, held from 23 to 25 June 2008. Chairperson El Jamri participated in the twentieth meeting of chairpersons of the human rights treaty bodies, held at the Office of the United Nations High Commissioner for Human Rights at Geneva, on 26 and 27 June 2008. Mr. El Jamri and Mrs. Poussi represented the Committee at the eighth inter-committee meeting, held from 1 to 3 December 2008.

F. Promotion of the Convention

10. Mrs. Dieguez represented the Committee at the International Meeting on the Protection of the Rights of Children in the Context of International Migration, which was hosted by the Government of Mexico and took place on 30 September and 1 October 2008.

11. Mr. Kariyawasam represented the Committee at the second Global Forum on Migration and Development, which was hosted by the Government of the Philippines and took place on 29 and 30 October 2008.

12. Mrs. Poussi represented the Committee at the Regional Conference on Refugee Protection and International Migration in West Africa, which took place in Dakar, on 13 and 14 November 2008.

13. Mr. Kariyawasam represented the Committee at the first session of the Forum on Minority Issues, established by the Human Rights Council, held at the United Nations Office at Geneva, on 15 and 16 December 2008, which focused on matters of education.

14. At its 93rd meeting (ninth session), the Committee met with members of the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe. Among the topics of discussion were the issue of ratifications of the Convention by Council of Europe Member States, in particular how to encourage ratification; the situation of irregular migrants and their rights; and the possibility of the two Committees holding a joint conference.

15. At its 115th meeting, the International Steering Committee of the Global Campaign for Ratification of the Convention on the Rights of Migrants presented its new Guide to Ratification of the International Convention for the Protection of All Rights of Migrant Workers and Members of Their Families. The text of the Guide is available on the website of the Office of the High Commissioner for Human Rights.[1]

16. At its 116th meeting (tenth session), on the occasion of International Labour Day, the Committee held a round table on the right of migrant workers to freedom of association, and in particular their right to join and establish trade unions. The round table was attended by representatives of Member States, intergovernmental organizations, United Nations specialized agencies and non-governmental organizations. Participants highlighted the importance of freedom of

[1] http://www.ohchr.org/Documents/Press/HandbookFINAL.PDF.

association as a core right for migrant workers in order to enable them to enjoy their other rights. The list of participants is reproduced in annex V to the present report.

G. Adoption of the report

17. At its 117th meeting (tenth session), the Committee adopted its annual report to the General Assembly.

II. METHODS OF WORK

18. At its 96th meeting (ninth session), the Committee discussed its procedure concerning follow-up to its concluding observations. Although the Committee does not request follow-up replies to its concluding observations on initial reports, it has received voluntary follow-up replies from Ecuador and Mexico. The Committee decided that the Committee member who had acted as rapporteur for the examination of the report concerned would study the follow-up replies received and recommend appropriate action to the Committee.

19. With regard to the periodicity of reports, as of its ninth session, the Committee decided that, for initial reports that were submitted late and where the due date for the next periodic report is within two years or already passed, it will request the State party concerned to present its periodic report within two years of the examination of the initial report.

III. COOPERATION WITH BODIES CONCERNED

20. The Committee continued its cooperation with United Nations specialized agencies, intergovernmental organizations and non-governmental organizations. It welcomed their contributions in relation to the consideration of the reports of States parties.

21. The Committee in particular expresses its appreciation for the active support of its work by the International Labour Organization (ILO), which assists the Committee in a consultative capacity, in accordance with article 74, paragraph 5, of the Convention.

IV. REPORTS BY STATES PARTIES UNDER ARTICLE 73 OF THE CONVENTION

22. During its ninth session, the Committee noted with concern that many initial reports from States parties under article 73 of the Convention had not yet been received. It decided to send reminders to those States parties whose reports were overdue. Annex III to the present report contains a table showing the dates by which the reports of States parties should be submitted.

23. During its tenth session (115th meeting), the Committee met with representatives of States parties to the Convention and encouraged them to present their reports without delay.

V. CONSIDERATION OF REPORTS BY STATES PARTIES IN ACCORDANCE WITH ARTICLE 74 OF THE CONVENTION

24. Azerbaijan

(1) The Committee considered the initial report of Azerbaijan (CMW/C/AZE/1) at its 100th and 102nd meetings (see CMW/C/SR.100 and SR.102), held on 21 and 22 April 2009, and adopted at its 111th meeting, held on 28 April 2009, the following concluding observations.

A. Introduction

(2) The Committee, while regretting the delay in submission of the State party's initial report, welcomes the submission of the report as well as the replies to the list of issues (CMW/C/AZE/Q/1 and Add.1). It also welcomes the constructive and fruitful dialogue initiated with a competent high-level delegation. The Committee, while expressing satisfaction for the updated information provided orally by the delegation, regrets that the report and the written responses do not contain sufficient information on several important questions of both a legal and practical nature, and that the written responses were not submitted well in advance to allow timely translation into all the Committee's working languages.

(3) The Committee recognizes that migrant flows have changed considerably and become more complex in Azerbaijan in the last few years, and that it has moved from a country of origin to becoming also a country of transit and destination, with significant numbers of migrant workers in its territory.

(4) The Committee notes that many of the countries in which Azerbaijani migrant workers are employed are not yet parties to the Convention, which may constitute an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

B. Positive aspects

(5) The Committee notes with appreciation the State party's efforts to work on the quality and availability of data on its migratory flows, particularly through the creation of the Unified Migration Database and the inclusion of questions related to migration in the population census started in April 2009.

(6) The Committee welcomes the State Migration Service, established by Decree 560 of 19 March 2007, as well as the work undertaken by the State party under the State Migration Programme of 2006-2008, established by Decree 1575 of 25 July 2006, to study migration processes with a view to enhancing relevant legislation.

(7) The Committee notes that the State party has concluded bilateral and multilateral agreements, at the regional and international level, and encourages the conclusion of these agreements in so far as they promote and protect the rights of migrant workers and members of their families. The Committee

notes in particular the accession of the State party to the Agreement on Cooperation in the Field of Labour Migration and the Social Protection of Migrants for the Commonwealth of Independent States (CIS) region, as well as the regional cooperation on the issue of irregular migration taken under the CIS framework.

(8) The Committee welcomes the recent ratification of the following instruments:

(a) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in 2003;

(b) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict, ratified on 25 May 2000;

(c) The Convention on the Rights of Persons with Disabilities and its Optional Protocol on 28 January 2009.

C. Factors and difficulties

(9) The Committee takes note of the expression by the State party of difficulties in implementing the Convention in the Nagorno-Karabakh region, as reflected in Security Council resolutions 822, 853, 874 and 884 of 1993.

D. Principal subjects of concern, suggestions and recommendations

1. General measures of implementation (arts. 73 and 84)

Legislation and application

(10) While the Committee takes note of articles 148 and 151 of the Constitution of the State party, it is concerned that the exact status of the Convention in domestic law remains unclear and regrets the lack of information, including examples, on the application of the Convention by the domestic courts.

(11) **The Committee invites the State party to clarify the exact status of the Convention in domestic law, so as to ensure full implementation of all the Convention rights in all circumstances, and to provide examples of the application of the Convention by the domestic courts, in its second periodic report.**

(12) While taking note with interest of the State party's expressed intention to prepare a draft Migration Code, which will incorporate all the provisions set out in the Convention, the Committee remains concerned at the fact that there is currently no definition of migrant workers that reflects the definition given in article 2 of the Convention.

(13) **The Committee encourages the State party to bring its legislation in conformity with the Convention, and promptly adopt a new Migration Code. The State party should ensure that the new Migration Code incorporates the definition of migrant worker set out in article 2 of the Convention, and is fully consistent with the rights recognized by the Convention to migrant workers in an undocumented or irregular situation.**

(14) The Committee notes the measures undertaken by the State party to simplify migration procedures, such as the Presidential Decree of 4 March 2009 on the application of the "single window" principle that will be applied as of 1 July 2009. However, the Committee remains concerned that, in spite of the "single window" policy, the migration procedures, in particular to obtain an individual permit of work, continue to be burdensome and complex, and may as a consequence encourage irregular migration. The Committee is particularly concerned that, under Cabinet of Ministers Decision No. 214 of 6 December 2000, individual work permits may be granted for a one-year period and renewed four times, each time for not more than one year, after which migrant workers concerned must return to their countries for at least one year before initiating again the proceeding to return to Azerbaijan.

(15) **The Committee encourages the State party to: (a) take all necessary and effective measures to ensure that the implementation of its "single window" policy results in positive practical improvements to simplify and streamline the application for work permits in Azerbaijan, in order to guarantee that migrant workers enjoy their rights under the Convention without discrimination; and (b) to consider reviewing the existing restrictions on the renewal of work permits.**

(16) The Committee notes that Azerbaijan has not yet made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals.

(17) **The Committee encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention.**

(18) The Committee notes that Azerbaijan has still not ratified the International Labour Organization (ILO) Convention No. 97 (1949) concerning Migration for Employment or Convention No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers.

(19) **The Committee encourages the State party to consider ratifying ILO Conventions No. 97 and No. 143 in the near future.**

Data collection

(20) While welcoming the efforts made by Azerbaijan to collect information and statistics on migration issues, the Committee regrets the lack of sufficient information on migration flows and on other migration-related issues, as well as the fact that they reflect only the migrant workers who succeeded in obtaining a work permit. While noting the difficulties faced by the State party in this

regard, the Committee recalls that such information is indispensable to an understanding of the situation of migrant workers in the State party and to an assessment of the implementation of the Convention.

(21) **The Committee encourages the State party to intensify its efforts to create a sound and coordinated database, in line with all aspects of the Convention, including systematic data - as disaggregated as possible - as a tool for effective migration policy and for the application of the various provisions of the Convention. When precise information is not possible, for instance with respect to migrant workers in an irregular situation, the Committee would appreciate receiving data based on studies or estimated assessments.**

Training in and dissemination of the Convention

(22) The Committee notes with appreciation that some non-governmental organizations (NGO) in Azerbaijan, involved in migration issues, work on raising public awareness, provide legal advice and conduct research. It also notes with appreciation the General Collective Agreement between the Azerbaijan Confederation of Trade Unions, the Cabinet of Ministers and the National Confederation of Entrepreneurs (Employers) meant to obtain information on migrant workers in Azerbaijan and abroad, as well as improve the relevant legislation. It further notes the efforts undertaken by the State party to train judges and public prosecutors as well as the establishment of the free consultation service at the Migration Agency. The Committee, however, notes with concern that there is not sufficient information showing that the State party has taken measures to disseminate information and promote the Convention.

(23) **The Committee encourages the State party to: (a) intensify training for all officials working in the area of migration, in particular police and border personnel, as well as officials at the local level dealing with migrant workers, social workers, judges and prosecutors on the protection and promotion of the rights of migrant workers, and invites the State party to provide information in its second periodic report on any such training programmes; and (b) continue to work with civil society organizations, in order to disseminate information and to promote the Convention.**

2. General principles (arts. 7 and 83)

Non-discrimination

(24) While taking note that, according to the delegation, migrant workers have equal rights with citizens of Azerbaijan, the Committee is concerned at information that migrant workers, in particular undocumented and irregular migrant workers, and members of their families, may in practice suffer from various forms of discrimination, in particular in the area of employment, education, and housing.

(25) **The Committee encourages the State party to:**

(*a*) Intensify its efforts to ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction effectively enjoy the rights provided for in the Convention without any discrimination, in conformity with article 7;

(*b*) Intensify its efforts by promoting information campaigns for public officials working in the area of migration, especially at the local level, and for the general public on the elimination of discrimination against migrants.

Right to an effective remedy

(26) While taking note of the information provided by the State party that migrant workers have access to the courts of law and enjoy protection of the rights laid down in the legislation, the Committee remains concerned at reports that migrant workers, in particular those in an undocumented or irregular situation, have in practice limited access to justice, due to a lack of awareness of the administrative and judicial remedies available to them and to fear that they may lose their employment or face deportation if they approach the courts.

(27) **The Committee encourages the State party to strengthen its efforts to inform migrant workers of the administrative and judicial remedies available to them and to address their complaints in the most effective manner. It recommends that the State party ensure that, in legislation and in practice, migrant workers and members of their families, including those in an irregular situation, have the same rights as nationals of the State party to file complaints and to obtain effective redress mechanisms before the courts, including on labour issues.**

(28) The Committee notes with concern reports that migrant workers who face expulsion or who have to leave the country after their employment has been terminated by their employer, are not given enough time to finalize pending matters and to seek redress for any violations of rights they may have suffered.

(29) **The Committee recommends that the State party modify its legislation so that migrant workers may stay in the country for a sufficient period of time in order to allow them to seek redress for any violations of the rights they may have suffered.**

3. Human rights of all migrant workers and members of their families (arts. 8-35)

(30) While taking note of the information provided by the delegation in this regard, in particular the creation of the "Electronic Health Card" at the Information Centre of the Ministry of Health, the Committee remains concerned at reports received that migrant workers and members of their families in an undocumented or irregular situation do not enjoy in practice their right to medical care, including emergency medical care, and that children of migrant workers in an undocumented or irregular situation have difficult access to education.

(31) **The Committee recommends that the State party take the necessary measures, including legislative amendments, to ensure that the provision of basic services, such as education and urgent medical care, do not depend on the provision of a residence and/or work permit by the migrant worker and to guarantee the rights of migrant workers and their families, including those in an undocumented or irregular situation, under articles 28 and 30 of the Convention.**

(32) The Committee regrets that it has not received sufficient information on the measures taken by the State party to protect the rights of Azerbaijani migrant workers abroad.

(33) **The Committee nevertheless encourages the State party to take effective measures to ensure the best possible protection for Azerbaijani migrant workers abroad, including through bilateral agreements with countries receiving Azerbaijani migrant workers and by raising awareness of the rights set out in the Convention among migrant workers and those seeking to migrate abroad to work.**

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36-56)

(34) The Committee is concerned at reports that in case of early termination of a labour contract the residence permit of a migrant worker becomes null and void and that migrant workers do not have the right to seek alternative employment.

(35) **The Committee recommends that the State party modify its legislation so that migrant workers shall not be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of termination of their employment prior to the expiration of their work permit, in accordance with article 51 of the Convention.**

(36) The Committee notes with interest the information according to which Azerbaijani nationals abroad have the right to vote in the elections of Azerbaijan, through registration at the consulates in the country where they reside. The Committee also notes that according to information provided by the delegation, foreigners who have resided in Azerbaijan for at least five years, have the right to vote in elections of the municipality in which they reside, if his/her State of origin grants the same right to foreigners.

(37) **The Committee recommends that the State party consider generalizing the right to vote in municipal elections for foreigners residing in Azerbaijan and invites the State party to provide details, including statistical data, about the practical implementation of these rights in its next periodic report.**

5. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64-71)

(38) While the Committee notes information according to which formal programmes of assistance to migrants who are returning to Azerbaijan are in the process of being drafted, it remains concerned

at the absence of mechanisms to assist the voluntary return of Azerbaijani workers and members of their families to Azerbaijan although according to the State party migration flows have reversed and many Azerbaijanis who previously left the country are returning.

(39) **The Committee invites the State party to adopt measures, in accordance with the principles of the Convention, and to consider setting up local institutional mechanisms to facilitate the voluntary return of migrant workers and members of their families as well as their durable social and cultural reintegration.**

(40) The Committee notes the existence of recruitment agencies that may act as intermediaries for Azerbaijani citizens seeking work abroad, which require a permit from the Ministry of Labour and Social Protection of Azerbaijan. However, it regrets that insufficient information was provided to assess whether the supervision of their activities is in conformity with the Convention.

(41) **The Committee recommends that the State party ensure that legislation on recruitment agencies that act as intermediaries for Azerbaijanis seeking work abroad and practices are in line with the provisions of the Convention, in particular article 66.**

(42) While noting with satisfaction the establishment of several bodies and institutions dealing with the issue of migration, such as State Migration Service, the Ministry of Foreign Affairs, the Ministry of Labour Protection, the Ministry of Internal Affairs, the State Committee on Refugees and Displaced Persons and the State Border Service, the Committee regrets the lack of sufficient information on the coordination and effective interaction of those institutions.

(43) **The Committee recommends that the State party continue its efforts to coordinate its entities working on migration issues in order to ensure their effectiveness and requests the State party to provide information to the Committee in its second periodic report, evaluating the results and indicating progress in implementation measures.**

(44) The Committee is concerned at reports of the very high percentage of migrant workers who are in irregular situation, without adequate working conditions and social security benefits.

(45) **The Committee recommends that the State party increase its efforts and adopt appropriate measures, in accordance with the Convention, in particular with article 69, to ensure that this situation does not persist, including the possibility of regularizing the situation of these migrant workers, taking into account the duration of their stay in Azerbaijan and other relevant considerations.**

(46) While welcoming the steps taken by the State party to combat human trafficking, including the establishment of the National Plan of Action, the National Coordinator on Trafficking and the Unit in the Ministry of Internal Affairs and the Special Police Force, the Committee remains concerned at the persistence of human trafficking in Azerbaijan and at the lack of information on effective measures of prevention.

(47) **The Committee recommends the State party to:**

(*a*) Effectively implement its National Plan of Action on Trafficking for 2009-2011, ensuring its full compatibility with the Convention;

(*b*) Strengthen specific anti-trafficking legislation with appropriate penalties for human trafficking;

(*c*) Evaluate the phenomenon of trafficking in persons and compile systematic disaggregated data to better combat trafficking in persons, especially of women and children, and to bring perpetrators to justice;

(*d*) Design and carry out awareness-raising campaigns to stop trafficking in persons, as well as ensure effective care and rehabilitation for the victims of trafficking.

6. Follow-up and dissemination

Follow-up

(48) The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to members of the Government and Parliament (Milli Meclis), as well as local authorities.

(49) The Committee encourages the State party to involve civil society organizations in the preparation of the State party's second report.

Dissemination

(50) The Committee likewise requests the State party to disseminate these concluding observations widely, including to public agencies and the judiciary, non-governmental organizations and other members of civil society, and to take steps to make them known to Azerbaijani migrants abroad and foreign migrant workers residing or in transit in Azerbaijan.

7. Next periodic report

(51) The Committee notes that the State party's second periodic report is due on 1 July 2009. In the circumstances, the Committee requests the State party to submit its second periodic report not later than 1 May 2011.

25. Bosnia and Herzegovina

(1) The Committee considered the initial report of Bosnia and Herzegovina (CMW/C/BIH/1) at its 104th and 106th meetings (CMW/C/SR.104 and SR.106), held on 23 April 2009 and 24 April 2009, and adopted at its 113th meeting, held on 29 April 2009, the following concluding observations.

A. Introduction

(2) The Committee, while regretting the delay in submission of the State party's initial report, welcomes the receipt of the report as well as the replies to the list of issues (CMW/C/BIH/Q/1 and Add.1). The Committee also welcomes the constructive and fruitful dialogue initiated with a competent, multisectoral, representative delegation. It regrets, however, that the report and the written responses do not contain sufficient information on several important questions pertaining to the practical implementation of the Convention.

(3) The Committee acknowledges the information submitted by the State party to the effect that Bosnia and Herzegovina is primarily a country of origin for migrant workers, with significant and increasing numbers of migrant workers in transit or living on its territory.

(4) The Committee notes that many of the countries in which Bosnia and Herzegovina migrant workers are employed are not yet parties to the Convention, which may constitute an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

B. Positive aspects

(5) The Committee welcomes the conclusion by the State party of bilateral and multilateral agreements, in so far as they promote the rights of migrant workers and combat crimes such as trafficking in persons.

(6) The Committee notes with appreciation recent ratification of the following instruments:

(a) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict;

(b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;

(c) The Protocol against the Smuggling of Migrants By Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime;

(d) International Labour Organization (ILO) Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

(7) The Committee notes with appreciation that Bosnia and Herzegovina is party to the ILO Convention No. 97 (1949) concerning Migration for Employment and Convention No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, and is one of only a few States to have ratified all the treaties relating to the rights of migrant workers.

C. Factors and difficulties

(8) The Committee notes the information provided by the State party that its political and administrative structure, which grants extensive autonomy to the two Entities established under the Dayton Peace Agreement of 1995 (the *Republika Srpska* and the Federation of Bosnia Herzegovina), may create constraints in planning, developing and implementing comprehensive and coordinated laws and policies for the implementation of the Convention at all levels.

D. Principal subjects of concern, suggestions and recommendations

1. General measures of implementation (arts. 73 and 84)

Legislation and application

(9) The Committee, while acknowledging the oral information provided by the delegation during the dialogue with the Committee, regrets that the State party report does not contain adequate information in relation to practical measures taken by the State party to implement the legal framework, in particular the degree to which the constitutional and other legal protections of migrant workers and members of their families are enforced.

(10) **The Committee recommends that the State party incorporate, in its next periodic report, detailed information on the practical implementation of the legal framework.**

(11) The Committee welcomes the State party's efforts to address rights related generally to employment, including the rights of non-citizens, through the promulgation of a number of laws at the national and Entity levels. It is concerned, however, that the proliferation of legislation at the national and Entity levels has resulted in a lack of consistency between the respective laws and regulations at national and Entity level which, in turn, undermines the State party's ability to protect the rights of migrant workers as envisaged by the Convention. In particular, the Committee is concerned that the different laws in the Entities regulating the issuing of work and residence permits may not be in compliance with national law and the Convention.

(12) **The Committee recommends that the State party take all necessary measures to harmonize its legislation with the Convention in order to implement its provisions.**

(13) The Committee notes that Bosnia and Herzegovina has not yet made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals.

(14) **The Committee encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention.**

Data collection

(15) While noting the State party's efforts in gathering data relating to migrant inflows, including the proposed plans of the State party to merge all migration-related databases, the Committee is concerned that the continuing existence of several databases containing similar information may hinder efforts to effectively manage this information. The Committee is also concerned at the lack of adequate information on transit migration patterns.

(16) **The Committee recommends that the State party expedite its efforts to integrate all migration-related databases in order to ensure the effective management of information and assist the development of sound migration policies. The Committee also recommends that the State party include, in its next report, information relating to transit migration.**

Training in and dissemination of the Convention

(17) The Committee notes the information provided by the delegation in relation to the training of border police on the Convention, but notes the absence of detailed information thereon. The Committee is concerned that current training efforts may be limited in their reach and that there is no information on measures to disseminate information and promote the Convention among other relevant stakeholders, in particular civil society organizations.

(18) **The Committee encourages the State party:**

(*a*) To strengthen and expand its training programmes to include all officials working in the area of migration, including social workers, judges and prosecutors, and invites the State party to provide information in its second periodic report on any such training programmes;

(*b*) To take the necessary steps to ensure access by migrant workers to information on their rights under the Convention;

(*c*) To work with civil society organizations in order to disseminate information on and to promote the Convention.

2. General principles (arts. 7 and 83)

Non-discrimination

(19) The Committee welcomes the promulgation of the Law on Movement and Stay of Aliens and Asylum, which entered into force in October 2003, and provides that non-citizens shall not be subject to discrimination on any grounds. The Committee also notes that the Constitutions of Bosnia and Herzegovina and the Entities, similarly, prohibit discrimination. However, the Committee is concerned that there is no precise information available as to the extent to which the legal framework has been effective in protecting the rights of migrant workers from discrimination.

(20) **The Committee recommends that the State party include, in its next periodic report, detailed information on the effective application of the anti-discrimination provisions in practice.**

Right to an effective remedy

(21) The Committee is concerned at information indicating violations of the rights of migrant workers to an effective remedy, in particular in relation to the revocation of rights of citizenship and subsequent expulsion orders. In this regard, the Committee is concerned that migrant workers who have been stripped of their right to citizenship are particularly vulnerable to having their due process rights violated.

(22) **The Committee encourages the State party to strengthen the legal framework available to migrant workers for the effective redress of such complaints. It recommends that the State party ensure that, in legislation and in practice, migrant workers and members of their families, including those in an irregular situation, have the same rights as nationals of the State party to file complaints and to obtain effective redress before the courts.**

3. Human rights of all migrant workers and members of their families (arts. 8-35)

(23) The Committee is concerned at the lack of information regarding the extent, if any, to which migrant workers and members of their families in an undocumented or irregular situation enjoy in practice the rights set out in Part III of the Convention.

(24) **The Committee recommends that the State party review its legislation to ensure that migrant workers and members of their families in an undocumented or irregular situation enjoy the rights under Part III of the Convention.**

(25) The Committee is concerned at reports that the conditions of detention in the immigration holding centre are not in accordance with the Convention. In particular, the Committee notes with concern that the immigration centre does not provide adequately for the accommodation of families. The Committee is, moreover, concerned that no information was provided in relation to the maximum period for which migrants may be detained.

(26) **The Committee recommends that the State party take steps to ensure that migrant workers and members of their families who are held in detention centres have access to legal aid and consular services, that they are not detained except in accordance with clear legal criteria and that their treatment is otherwise in full compliance with the Convention.**

(27) The Committee notes the existence of public employment services which provide information on migration. The Committee, however, notes (as did the ILO Committee of Experts on the Application of Conventions and Recommendations in its direct request of 2008 regarding Convention No. 97 (1949) concerning Migration for Employment), that the existence of official information services in itself is not enough to guarantee that migrant workers are sufficiently and objectively

informed on migration-related issues. The Committee reiterates the concern of the ILO Committee of Experts that there is inadequate protection for migrant workers from misleading information from intermediaries who might have an interest in encouraging migration in any form, regardless of the consequences for the workers involved.

(28) **The Committee recommends that the State party:**

(a) **Take adequate measures to combat misleading propaganda relating to migration, through, inter alia, the full implementation of article 33 of the Convention;**

(b) **Take such steps as may be necessary to protect migrant workers from any abuses due to misleading information on the migration process.**

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36-56)

(29) The Committee notes the fact that the electoral laws of the State party make it possible for citizens of Bosnia and Herzegovina who reside temporarily abroad to participate in elections through the consulate or other diplomatic representation of the country where they are residing or by mail. The Committee, however, notes the significant reduction in the number of State party nationals abroad who participate in elections and regrets the lack of clarity in relation to the implementation of this right.

(30) **The Committee urges the State party to strengthen measures to facilitate voting by its nationals abroad. The Committee requests the State party to provide, in its second periodic report, additional information on the legislative framework for facilitating the exercise of this right, as well as its practical implementation in the case of workers resident outside of Bosnia and Herzegovina.**

(31) In light of the high percentage of citizens of Bosnia and Herzegovina abroad, the Committee is concerned that no information has been provided regarding procedures or institutions through which account may be taken of the special needs, aspirations and obligations of the State party's migrant workers and members of their families abroad.

(32) **The Committee recommends that the State party consider the establishment of such procedures and institutions in accordance with article 42, paragraph 1, of the Convention and provide, in its next report, information on any measures taken pursuant to that provision.**

5. Provisions applicable to particular categories of migrant workers and members of their families (arts. 57-63)

(33) The Committee is concerned that there are no precise data available on the number of seasonal workers employed in the State party. Furthermore, the Committee notes that there is no system by which seasonal workers are registered nor are there any bilateral or multilateral agreements on the

movement of seasonal workers. The Committee is concerned that the lack of information and control may make seasonal workers vulnerable to inequitable conditions of work and to abuse.

(34) **The Committee recommends that the State party:**

(a) **Develop and implement a system of registration as well as a system of data collection on seasonal workers;**

(b) **Consider negotiating bilateral and multilateral agreements with neighbouring and other countries, as appropriate, with a view to promoting sound, equitable and humane conditions in connection with the migration of seasonal workers and in accordance with the Convention;**

(c) **Take all necessary steps to ensure to seasonal workers the enjoyment of the right to the same treatment as national workers, particularly in respect of remuneration and conditions of work, and to ensure systematic monitoring by the relevant authorities of compliance with international standards in this regard.**

6. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64-71)

(35) The Committee notes that several agencies are responsible for the implementation of laws and policies relating to labour migration and is concerned that there may be areas of overlap and duplication in the planning and coordination of activities and responsibilities relating to the rights of migrant workers among agencies and ministries at the national and Entity levels.

(36) **The Committee recommends that the State party, with a view to improving the coordination and implementation of measures to protect the rights of migrant workers and their families, take the necessary steps to ensure effective coordination between its ministries and agencies at all levels of Government.**

(37) The Committee notes with appreciation the efforts of the State party to combat trafficking, including through cooperation with the international community, the implementation of two national action plans and extensive legislative and institutional reforms. The Committee, furthermore, welcomes the State party's efforts to prosecute persons involved in trafficking. The Committee, however, remains concerned about the phenomenon of trafficking in Bosnia and Herzegovina.

(38) **The Committee recommends that the State party continue its efforts to address trafficking, including through measures aimed at prevention as well as the care and rehabilitation of victims of trafficking. The Committee encourages the State party to continue to combat trafficking through the prosecution of those responsible.**

7. Follow-up and dissemination

Follow-up

(39) The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to members of the Government and legislature, as well as administrative and other relevant authorities responsible at the national and Entity levels.

(40) The Committee regrets the limited involvement of non-governmental organizations (NGOs) and other civil society organizations in the preparation of the present report and encourages the State party to take all the necessary measures to ensure the involvement of civil society organizations in the implementation of the Convention and the preparation of the State party's second periodic report.

Dissemination

(41) The Committee likewise requests the State party to disseminate these concluding observations widely, including to public agencies and the judiciary, NGOs and other members of civil society, and to take steps to make them known to Bosnia and Herzegovina migrant workers abroad and foreign migrant workers residing or in transit in Bosnia and Herzegovina.

8. Next periodic report

(42) The Committee invites the State party to submit its common core document in accordance with the 2006 harmonized guidelines for the preparation of a common core document (HRI/MC/2006/3 and HRI/MC/2006/3/Corr.1).

(43) The Committee notes that the State party's second periodic report is due on 1 July 2009. In the circumstances, the Committee requests the State party to submit its second periodic report not later than 1 May 2011.

26. Colombia

(1) The Committee examined the initial report of Colombia (CMW/C/COL/1) at its 101st and 103rd meetings (see CMW/C/SR.101 and 103), held on 21 and 22 April 2009, and adopted the following concluding observations at its 112th and 114th meetings, held on 29 and 30 April 2009.

A. Introduction

(2) The Committee, while regretting the delay in submission, welcomes the initial report of the State party, and also the replies to the list of issues (CMW/C/COL/Q/1 and Add.1) and the additional information presented by the delegation, which enabled it to obtain a clearer idea of the state of

implementation of the Convention in the State party. The Committee also appreciates the frank dialogue conducted with the delegation.

(3) The Committee notes that, while Colombia is mainly a country of origin of migrant workers, it has a number of foreign migrant workers staying in its territory, or in transit.

(4) The Committee notes that some of the countries in which Colombian migrant workers are employed are not yet parties to the Convention, which could constitute an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

B. Positive aspects

(5) The Committee welcomes the State party's efforts to promote and protect the rights of Colombian migrant workers abroad, and also welcomes the adoption of bilateral agreements with countries that employ Colombian migrant workers, insofar as they promote the rights of migrant workers.

(6) The Committee further welcomes:

(a) The establishment, by Decree No. 1239 of 2003, of the National Intersectoral Migration Committee as the body responsible for promoting sound, equitable, humane and lawful conditions for the migration of workers and members of their families;

(b) The establishment of the Migrant Information and Support Centre (CIAMI) with the aim of providing information on work and/or services outside the country;

(c) The entry into force of Act No. 1070 of 2006 governing the voting rights of foreigners resident in Colombia, and of Decision No. 373 of 31 January 2007, which enabled foreigners resident in Colombia to register to vote in the elections for mayors, municipal councillors and members of local administrative bodies, held on 28 October 2007;

(d) The establishment in 2003 of the "Colombia Nos Une" ("Colombia Unites Us") programme as part of the 2006 2010 national development plan, with the objective of strengthening the ties between Colombians living abroad and their families, their regions of origin and their country at large;

(e) The implementation of two processes for regularizing the situation of migrants in the State party, the first in 2001, and the second currently under way;

(f) The establishment in November 2008 of the Inter institutional Committee to Combat Trafficking in Persons, with the corresponding Comprehensive National Strategy for 2007 2012, and the Operations Centre to Combat Human Trafficking;

(g) The ongoing process of drafting a comprehensive migration policy, which involves all government agencies whose work concerns the migration process, with a view to dealing

comprehensively with the social, political, economic, cultural, legal and institutional phenomena associated with international migration.

(7) The Committee also welcomes the country's accession to or ratification of the following instruments:

(a) The Optional Protocols to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict, on 11 November 2003 and 25 May 2005, respectively;

(b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, ratified on 4 August 2004;

(c) The Convention No. 182 (1999) of the International Labour Organization (ILO) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, ratified on 28 January 2005.

C. Principal subjects of concern, suggestions and recommendations

1. General measures of implementation (arts. 73 and 84)

Legislation and implementation

(8) The Committee considers that the reservations entered by the State party in respect of articles 15, 46 and 47 of the Convention appear to be of a declaratory and technical nature and to entail no conflict between the Convention's objectives and the State party's relevant legislation.

(9) **The Committee recommends that the State party consider withdrawing the reservations entered in respect of articles 15, 46 and 47 of the Convention.**

(10) The Committee notes that Colombia has not yet made the declarations provided for in articles 76 and 77 of the Convention, under which it would recognize the competence of the Committee to receive communications from States parties and from individuals.

(11) **The Committee encourages the State party to consider the possibility of making the declarations provided for in articles 76 and 77 of the Convention.**

(12) The Committee has not yet ratified Convention No. 97 (1949) concerning Migration for Employment and Convention No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers. It also expresses its concern at the fact that the State party has not yet acceded to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, ratified on 4 August 2004.

(13) **The Committee invites the State party to consider the possibility of acceding as soon as possible to ILO Convention No. 97 and Convention No. 143, as well as to the Protocol against the Smuggling of Migrants by Land, Sea and Air.**

Data collection

(14) The Committee recalls that information on migration flows, including immigration and transit flows, is essential to an understanding of the situation of migrant workers in the State party and to an assessment of the actual implementation of the Convention. The Committee has not received any information from the State party on the different categories of migrants that are relevant for assessing the actual implementation of the Convention, in particular with respect to migrants in transit, migrant women, unaccompanied migrant children and children of migrant workers who remain behind in the country of origin, and frontier and seasonal workers.

(15) **The Committee recommends that the State party:**

(*a*) **Continue its efforts to create a database that takes into account all aspects of the Convention and includes detailed data on the situation of migrant workers in Colombia, migrants in transit and emigrants;**

(*b*) **Include in this database data and statistics on migrant women, unaccompanied migrant children and children of migrant workers who remain behind in the country, and frontier and seasonal workers. When it is impossible to obtain precise information, for example on migrant workers in an irregular situation, the Committee would appreciate data based on studies or on approximate estimates;**

(*c*) **Carry out studies on the impact of migration on children, including children of Colombian migrants who remain in the country;**

(*d*) **Provide detailed information to the Committee on the situation of Colombian female migrant workers abroad.**

Training in and dissemination of the Convention

(16) The Committee welcomes the training seminars held in the State party on the provisions of the Convention, and the dissemination of the Convention among the authorities. However, the Committee has not received any information on the design and implementation of specific ongoing training programmes on the content of the Convention.

(17) **The Committee recommends that the State party promote ongoing training programmes on the content of the Convention for all officials working on migration issues or in contact with migrant workers and members of their families, including at the local level.**

(18) The Committee also recommends that the State party make the provisions of the Convention widely known to both Colombian migrant workers abroad and foreign migrant workers residing or in

transit in Colombia, as well as to communities as a whole, inter alia through long term awareness raising campaigns.

Participation of civil society

(19) The Committee regrets that civil society was not involved in the preparation of the State party's report.

(20) **The Committee recommends that the State party consider involving civil society organizations working in the field of migrants' rights in the preparation of the next report, and in activities relating to the implementation of the Convention.**

2. Human rights of all migrant workers and members of their families (arts. 8-35)

(21) The Committee noted that the centres run by the Administrative Department of Security (DAS) are used to detain migrants in an irregular situation. However, the Committee is concerned at gaps in the information provided by the State party with regard to the procedures for the detention of migrants by the Administrative Department of Security.

(22) **The Committee invites the State party to provide detailed information on the procedures applied by the Administrative Department of Security for the detention of migrant workers and members of their families. The Committee would also like to receive detailed information on the registration system and the physical conditions of the facilities in which migrants are held in the DAS centres.**

(23) The Committee notes that it is planned to establish a migrants' reception centre in the near future.

(24) **The Committee recommends that the State party finalize its plans for a migrants' reception centre, so as to establish a special centre to receive migrant workers and their family members, which respects and guarantees the rights enshrined in the Convention.**

(25) The Committee notes that responsibility for providing migrant workers with the information required under article 33 of the Convention is shared between various government bodies, and welcomes the establishment of the Migrant Information and Support Centre (CIAMI) for the purpose of providing information on work outside the country. However, the Committee has received no information on how Colombian migrant workers can obtain this information, and whether this type of service also exists for foreign immigrants in Colombia.

(26) **The Committee invites the State party to step up its efforts to guarantee the right of all migrant workers (whether emigrants or immigrants, or in transit) and their families to be informed of the rights set forth in the Convention, the conditions applicable to their admission, their rights and obligations under the law, and any other matters that will enable them to**

comply with administrative or other formalities. In addition, the Committee urges the State party to provide the information to foreign migrants in Colombia.

(27) The Committee notes that an appeal may usually be lodged through government channels (application for review or appeal) against an administrative act ordering an expulsion, with suspensive effect. However, the Committee is concerned that, when the expulsion is carried out on the grounds cited in article 105 of Decree No. 4000 of 2004 (for example, activities jeopardizing national security, public order or public health), no appeal may be lodged. In addition, the Committee is concerned that no appeal may be lodged against the cancellation of a visa by the Ministry of Foreign Affairs.

(28) **The Committee recommends that the State party adopt the necessary measures to ensure that expulsions/deportation procedures are respected, in compliance with article 22 of the Convention, in order to guarantee, in particular:**

(*a*) **That, in all cases, interested parties have the right to submit the reasons why they should not be expelled and to have their case reviewed by the competent authority, unless compelling reasons of national security require otherwise;**

(*b*) **The right to seek a stay of the decision of expulsion, pending the review mentioned in the above subparagraph;**

(*c*) **The right to seek compensation if a decision of expulsion that has already been executed is subsequently annulled;**

(*d*) **The Committee also recommends that the State party consider conducting a study of the compatibility of national legislation and the Convention in the area of expulsion and deportation.**

(29) The Committee notes with concern that, even though the children of all migrant workers, including those without documentation, may be registered with the Civil Registry, only children having at least one parent domiciled in Colombia are eligible for Colombian nationality. The Committee is particularly concerned about children who may become stateless. In this connection, the Committee welcomes the fact that the State party is in the process of acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

(30) **The Committee recommends that the State party, in accordance with article 29 of the Convention, should ensure, both in law and in practice, the right of all children to have a name, to registration of their birth and to a nationality. The Committee urges the State party to complete as soon as possible the process of accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

3. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36-56)

(31) The Committee is concerned at the dearth of information about how the State party guarantees the right of association of migrant workers.

(32) **The Committee encourages the State party to take the necessary steps to ensure that migrant workers have the right to form associations and trade unions and to sit on their executive bodies, in accordance with article 40 of the Convention and with the provisions of ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organize.**

(33) The Committee notes the progress made by the State party in its efforts to guarantee the right of Colombian workers resident abroad to vote in Colombia's presidential and Senate elections. However, the Committee has received no detailed information on how the right to vote is implemented in practice and what measures the State party is taking to facilitate the exercise of the right to vote by Colombian workers abroad.

(34) **The Committee invites the State party to provide detailed and updated information on the number of Colombian migrant workers who exercise the right to vote abroad. In addition, the Committee invites the State party to provide information on any measures it is taking for the effective guarantee of that right.**

4. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64-71)

(35) The Committee welcomes the implementation of information campaigns in an effort to mitigate the lack of information on migration and to prevent Colombian migrants from becoming ensnared in networks engaged in human smuggling and trafficking. It also welcomes, inter alia, the steps taken to provide more resources for aiding victims and for pursuing the criminal groups that organize these illicit activities. The Committee is concerned, however, that the State party continues to be a major country of origin of victims of trafficking, especially women and girls trafficked for commercial, sexual and labour exploitation.

(36) **The Committee recommends that the State party continue and redouble its efforts to combat trafficking in persons, especially women and children, and the smuggling of migrant workers, in particular by adopting measures:**

(*a*) **To combat the dissemination of false information regarding emigration and immigration;**

(*b*) **To detect and put a stop to the illegal or clandestine movement of migrant workers and their family members and to impose effective sanctions on individuals, groups or entities that organize or direct such movements or provide assistance to that end;**

(*c*) To impose effective sanctions on individuals, groups or entities that use violence, threats or intimidation against any migrant workers or their family members;

(*d*) To ensure consular protection for victims of trafficking abroad;

(*e*) To step up campaigns for the prevention of irregular migration, including human trafficking.

5. Follow-up and dissemination

Follow-up

(37) The Committee requests the State party to include detailed information in its second periodic report on the measures taken to give effect to the recommendations made in these concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that these recommendations are implemented, inter alia by transmitting them to the competent national and local authorities, for consideration and action.

Dissemination

(38) The Committee also requests the State party to disseminate these concluding observations, particularly to public agencies and the judiciary, non governmental organizations and other members of civil society, and to take the necessary steps to make them known to Colombian migrant workers abroad and to foreign migrant workers in transit or residing in Colombia.

Common core document

(39) The Committee invites the State party to update its common core document in accordance with the 2006 Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty specific documents (HRI/MC/2006/3 and Corr.1).

6. Next periodic report

(40) The Committee notes that the submission date for the State party's second periodic report is 1 July 2009. Under the present circumstances, the Committee urges the State party to submit its second periodic report by 1 May 2011 at the latest.

27. El Salvador

(1) The Committee considered the initial report of El Salvador (CMW/C/SLV/1) at its 89th and 90th meetings (see CMW/C/SR.89 and SR.90), held on 24 and 25 November 2008, and adopted the following concluding observations at its 95th meeting, held on 27 November 2008.

A. Introduction

(2) The Committee welcomes the submission of the initial report of the State party as well as the replies to the list of issues (CMW/C/SLV/Q/1 and Add.1) which enabled the Committee to gain a better understanding on the implementation of the Convention in the State party. The Committee also welcomes the constructive and fruitful dialogue initiated with a competent high-level delegation.

(3) The Committee recognizes that El Salvador is mainly known as a country of origin, but is also a country of transit and destination, with significant numbers of migrant workers, in particular Guatemalans, Hondurans and Nicaraguans in its territory.

(4) The Committee notes that some of the countries in which El Salvador migrant workers are employed are not yet parties to the Convention, which may constitute an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

B. Positive aspects

(5) The Committee notes with appreciation the opening on 7 July 2008 of the migrants' holding centre *Centro de Atención Integral para Migrantes* in San Salvador, which improves the detention conditions of migrants awaiting deportation.

(6) The Committee also notes with appreciation the different initiatives taken by the State party to combat trafficking in persons, including the creation of a National Committee Against Trafficking in Persons, the inauguration in 2006 of a shelter for victims of trafficking and the inclusion of trafficking in persons as a crime under Salvadoran criminal law.

(7) The Committee further notes with appreciation the information provided by the State party on the preparation and development of guidelines, manuals and standard procedures, particularly in regard to repatriation of children and victims of trafficking, which compile best practices in the area of migration.

(8) The Committee welcomes the efforts of the State Party to promote and protect the rights of Salvadoran migrant workers abroad, including by appointing a Vice-Minister for Salvadorans Abroad in 2004, and by opening protection consulates.

(9) The Committee also welcomes the conclusion by the State Party of bilateral and multilateral agreements, at the regional and international level, with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families.

(10) The Committee further welcomes the ratification of the following instruments:

(a) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict, ratified on 17 May 2004 and 18 April 2002, respectively;

(b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants By Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, ratified on 18 March 2002;

(c) International Labour Organization (ILO) Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, ratified on 12 October 2000.

C. Principal subjects of concern, suggestions and recommendations

1. General measures of implementation (arts. 73 and 84)

Legislation and application

(11) The Committee notes with concern that the draft migration and aliens act, which incorporates some of the provisions of the Convention, remains under consideration by the President's office and has not been submitted for consultation with the National Human Rights Institution (*Procuraduria para la Defensa de los Derechos Humanos*) or civil society.

(12) **The Committee encourages the State party to take all necessary measures for the prompt harmonization of its legislation, including in particular the current migration and aliens laws, with the provisions of the Convention.**

(13) The Committee notes that El Salvador has not yet made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals.

(14) **The Committee encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention.**

(15) The Committee notes that El Salvador has made declarations regarding articles 46, 47, 48 and 61, paragraph 4, of the Convention, which may impede the full enjoyment of the rights enshrined in those provisions.

(16) **The Committee encourages the State party to review its declarations regarding articles 46, 47, 48 and 61, paragraph 4, of the Convention, with a view to withdrawing them.**

(17) The Committee notes that El Salvador has still not acceded to Convention No. 97 (1949) concerning Migration for Employment and Convention No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers.

(18) **The Committee invites the State party to consider acceding to ILO conventions No. 97 and No. 143 as soon as possible.**

Data collection

(19) The Committee welcomes the information and statistics provided by the State party but regrets the paucity of information on migration flows and on other migration-related issues. The Committee recalls that such information is indispensable to an understanding of the situation of migrant workers in the State party and to an assessment of the implementation of the Convention.

(20) **The Committee encourages the State party to create a sound and coordinated database, in line with all aspects of the Convention, including systematic data - as disaggregated as possible - as a tool for effective migration policy and for the application of the various provisions of the Convention. When supplying precise information is not possible, for instance with respect to migrant workers in an irregular situation, the Committee would appreciate receiving data based on studies or estimated assessments.**

Training in and dissemination of the Convention

(21) The Committee notes the information provided by the State party on training programmes on the Convention for relevant public officials, such as border police officers and migration officials.

(22) **The Committee encourages the State party to continue organizing training programmes on a regular basis for all officials working in the area of migration, including border police officers, social workers, judges and prosecutors and invites the State party to provide information in its second periodic report on any such training programmes.**

2. General principles (arts. 7 and 83)

Non-discrimination

(23) The Committee is concerned at the information that migrant workers and members of their families may suffer from various forms of discrimination in the area of employment.

(24) **The Committee encourages the State party to:**

(*a*) **Intensify its efforts to ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction enjoy the rights provided for in the Convention without any discrimination, in conformity with article 7;**

(*b*) **Intensify its efforts by promoting information campaigns for public officials working in the area of migration, especially at the local level, and for the general public on the elimination of discrimination against migrants.**

Right to an effective remedy

(25) The Committee takes note of the information received from the State party that every individual, regardless of his or her nationality, has access to the courts of law and enjoys protection of

the rights laid down in the legislation, and that complaint mechanisms before the National Human Rights Institution are available for migrant workers. The Committee is nevertheless concerned that migrant workers, irrespective of their legal status, have in practice limited access to justice, due to a lack of awareness concerning the administrative and judicial remedies that are available to them.

(26) **The Committee encourages the State party to strengthen its efforts to inform migrant workers of the administrative and judicial remedies available to them and to address their complaints in the most effective manner. It recommends that the State party ensure that, in legislation and in practice, migrant workers and members of their families, including those in an irregular situation, have the same rights as nationals of the State party to file complaints and to obtain effective redress mechanisms before the courts, including the labour courts.**

3. Human rights of all migrant workers and members of their families (arts. 8-35)

(27) The Committee notes with concern that the procedure for expulsion/deportation is not fully regulated by law. The Committee further notes with concern that the right to seek a stay of the expulsion is not provided for in the law.

(28) **The State party is invited to ensure that:**

(*a*) **Migrant workers and members of their families are only expelled from the territory of the State party pursuant to a decision taken by the competent authority following a procedure established by law and in conformity with the Convention, and that this decision can be reviewed on appeal;**

(*b*) **Pending such appeal, the person concerned shall have the right to seek a stay of the expulsion.**

(29) The Committee notes with concern that it is not clear from the information provided by the State party how in practice it guarantees and monitors the equality of treatment of migrant workers in agricultural and domestic employment, in accordance with article 25 of the Convention.

(30) **The Committee invites the State party to ensure in practice the right of equality of treatment of migrant workers, particularly migrant women, in agricultural and domestic employment and to take measures to effectively monitor the employment conditions of migrant workers in agricultural and domestic employment and requests the State party to report on any measures taken in this regard in its second periodic report.**

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36-56)

(31) With reference to article 40 of the Convention, the Committee is concerned at the fact that article 47, paragraph 4, of the Constitution as well as article 225 of the Labour Code reserve to Salvadorans by birth the right to be part of the leadership of trade unions.

(32) **The Committee recommends that the State party take the necessary measures, including legislative amendments, to guarantee to migrant workers and members of their families the right to form, and to form part of the leadership of, associations and unions, in accordance with article 40 of the Convention, as well as with ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise.**

(33) The Committee is concerned that Salvadoran migrant workers abroad are not able to exercise their right to vote.

(34) **The Committee encourages the State party to continue its efforts with a view to revising its legal framework and take other steps to facilitate the exercise of voting rights by Salvadoran migrant workers residing abroad.**

(35) The Committee takes note of the explanations provided by the State party, that in recent practice migrant workers in El Salvador are given 60 to 90 days after expiration of their contracts in order to find new employment or change their migration status. The Committee notes with concern, however, that article 26 of the Migration Law, requires migrant workers to leave El Salvador upon termination of their contracts, regardless of the reason therefore, or else risk expulsion.

(36) **The Committee recommends that the State party derogates article 26 of the Migration Law in order to ensure compatibility of its legislation with provision of the Convention, in particular articles 51 and 52.**

5. Provisions applicable to particular categories of migrant workers and members of their families (arts. 57-63)

(37) The Committee, while taking note of programme for the regularization of seasonal workers, which makes it easier for this type of workers, mainly Nicaraguans and Hondurans, to obtain work permits in the State party, is concerned at the information according to which seasonal workers may be subjected to inequitable working conditions, particularly because employers usually recruit them informally.

(38) **The Committee recommends that the State party take all necessary measures to ensure to seasonal workers the enjoyment of the right to the same treatment as national workers, particularly in respect of remuneration and conditions of work, and to ensure systematic monitoring by the relevant authorities of compliance with international standards in this regard.**

(39) The Committee is concerned that frontier workers are at very high risk of being subjected to inequitable working conditions and other abuses.

(40) **The Committee encourages the State party to implement as soon as possible the El Salvador-Honduras Pilot Project for regularization (*Plan Piloto El Salvador-Honduras*) aimed at improving the situation of frontier workers and invites the State party to include in its**

national legislation the definition of frontier worker and of specific provisions related to the protection of their rights in accordance with article 58 of the Convention.

6. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64-71)

(41) The Committee notes with satisfaction the existence of the "Welcome Home" (*Bienvenido a casa*) programme as well as a reception centre (*Centro de Atención a Migrantes Salvadoreños*) for Salvadoran migrants returning to their country.

(42) **The Committee recommends that the State party continue developing the programme, in accordance with the principles of the Convention, with a view to assisting returning migrants in their sound reintegration into the Salvadoran economic and social fabric.**

(43) The Committee takes note of the work of the Division for Humanitarian and Migrants' Assistance in the repatriation of injured and deceased Salvadoran irregular migrants, and in the provision of medical assistance to injured migrants. Nevertheless, the Committee remains concerned at the various dangers that migrants encounter when they migrate irregularly.

(44) **The Committee recommends that the State party, while continuing to provide assistance for the reintegration of the injured and the repatriation of the deceased, intensify its efforts in prevention campaigns that counter misleading information relating to emigration and raise awareness of the dangers in irregular migration. The Committee invites the State party to ensure the appropriate means, including sufficient funding, for these purposes.**

(45) The Committee notes that the State party, through its Vice-Ministry of Foreign Relations for Salvadorans Abroad, is conducting a study on the impact of migration on children. The Committee nevertheless remains concerned at the situation of children in El Salvador, whose parents have migrated abroad, and the lack of information in this regard.

(46) **The Committee encourages the State party to finalize the study on the impact of migration on children and to share its findings widely, with the aim of developing adequate strategies to ensure the protection and the full enjoyment by children of migrant families of their rights.**

(47) The Committee, while acknowledging the initiatives taken by the State party to combat the phenomenon of trafficking in persons, is concerned at the lack of studies, analysis and disaggregated data in the State party to assess the extent of the phenomenon in, through and from the State party's territory. The Committee also notes with concern the relatively low rate of convictions in the cases of trafficking that were brought before the courts.

(48) **The Committee recommends the State party to evaluate the phenomenon of trafficking in persons and to compile systematic disaggregated data with a view to better combating trafficking in persons, especially of women and children, and bringing perpetrators to justice.**

(49) The Committee takes note of the criminal cases initiated for the crime of smuggling of migrants, but remains concerned at the paucity of information on the convictions and sanctions imposed as a result.

(50) **The Committee recommends that the State party intensify its efforts to counter migrant-smuggling, especially women and children, inter alia by taking appropriate steps to detect the illegal or clandestine movement of migrant workers and their families and to bring those responsible to justice.**

7. Follow-up and dissemination

Follow-up

(51) The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the State party should take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to members of the Government and Congress, as well as local authorities.

(52) The Committee encourages the State party to involve civil society organisations in the preparation of the State party's second report.

Dissemination

(53) The Committee likewise requests the State party to disseminate these concluding oobservations widely, including to public agencies and the judiciary, non-governmental organizations and other members of civil society, and to take steps to make them known to Salvadoran migrants abroad and foreign migrant workers residing or in transit in El Salvador.

8. Next periodic report

(54) The Committee notes that the State party's second periodic report is due on 1 July 2009. In the circumstances, the Committee requests the State party to submit its second periodic report not later than 1 December 2010.

28. Philippines

(1) The Committee considered the initial report of Philippines (CMW/C/PHL/1) at its 105th and 107th meetings (see CMW/C/SR.105 and SR.107), held on 23 and 24 April 2009, and adopted at its 114th meeting, held on 30 April 2009, the following concluding observations.

A. Introduction

(2) The Committee, while regretting the delay in submission of the State party's initial report, welcomes the receipt of the report as well as the replies to the list of issues (CMW/C/PHL/Q/1 and

Add.1). The Committee appreciates the constructive and fruitful dialogue with a competent, high-level delegation, which built on the report and the written responses to the list of issues giving more specific information on questions of both a legal and practical nature concerning the implementation of the Convention.

(3) The Committee recognizes that the Philippines is mainly a country of origin with a large number of migrant workers overseas.

(4) The Committee notes the fact that many of the countries employing Filipino migrant workers are not yet parties to the Convention, which may constitute an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

B. Positive aspects

(5) The Committee notes with appreciation the State party's commitment to migrant workers' rights, as illustrated by the national constitutional, legislative, judicial, and administrative frameworks that include several institutional mechanisms.

(6) The Committee appreciates that the State party considers the issue of migration as a priority in its domestic and foreign policy agenda.

(7) The Committee also notes with appreciation the active role that the Philippines is playing to promote the ratification of the Convention by countries of origin, transit and destination.

(8) The Committee also welcomes the active role of the Philippines in regional efforts to combat trafficking in persons, especially within Association of Southeast Asian Nations (ASEAN).

(9) The Committee further welcomes the recent ratification of, or accession to, the following instruments:

(a) The United Nations Convention on the Rights of Persons with Disabilities;

(b) Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict, and on the sale of children, child prostitution and child pornography;

(c) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime;

(d) The International Labour Organization Convention No. 97 (1949) concerning Migration for Employment and Convention No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, making the Philippines one of only a few States to have ratified all the treaties relating to the rights of migrant workers.

(10) The Committee welcomes the bilateral social security agreements concluded by the State party in so far as such agreements promote the rights of migrant workers and members of their families.

(11) The Committee notes the important role civil society plays as a partner in implementing the provisions of the Convention.

C. Factors and difficulties

(12) The Committee acknowledges that the geography of the thousands of islands in the State party makes it challenging to monitor effectively the movement of people and control borders to prevent irregular migration and to safeguard the rights of all migrant workers.

D. Principal subjects of concern, suggestions and recommendations

(13) The Committee notes with interest the multitude of initiatives and programmes undertaken by the State party in response to challenges faced in its labour migration policy. At the same time, the Committee is concerned that implementation, follow-up and evaluation of these programmes are insufficient.

(14) **The Committee recommends proper follow-up procedures as well as clear measurable and time-bound targets in order to facilitate tracking their implementation.**

(15) The Committee welcomes the information given by the State party's delegation on the labour migration policy and, in particular, its efforts to ensure that Filipino migrant workers are only deployed to countries where their rights are respected. However, the Committee is concerned that State party's policies, especially through Administrative Order Nos. 247 and 248, 2008 and 2009 respectively, would seem to be aimed at the promotion of foreign employment of migrant workers.

(16) **The Committee recommends that the State party review its labour migration policy in order to give primary importance to human rights of migrant workers, in line with the State party's own professed goal as set out in RA 8042.**

1. General measures of implementation (arts. 73 and 84)

Legislation and application

(17) The Committee notes that the Philippines has not yet made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals.

(18) **The Committee encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention.**

Data collection

(19) The Committee notes with interest the statistics provided by the State party but is concerned at the paucity of information measuring stock and flows of Filipino migrant workers. The Committee regrets that the Inter-Agency Committee on the Shared Government Information System on Migration (SGISM) foreseen to be established by Executive Order is yet to be implemented. Further the Committee notes with regret the scarce information concerning the number of Filipino migrants abroad, their skills and employment, accurate data on returnees, second and third generation Filipinos overseas, and the little information relating to foreign migrant workers in the State party.

(20) **The Committee recalls that reliable, quality information is indispensable to understand the situation of migrant workers in the State party, to assess the implementation of the Convention and to develop adequate policies and programmes. In this regard, the Committee encourages the State party to:**

(*a*) **Establish the Shared Government Information System on Migration (SGISM) as a harmonized database, in line with the Convention including disaggregated data, as a tool for a more effective labour migration policy and the application of the provisions of the Convention;**

(*b*) **Strengthen collaboration with Philippine Embassies and Consulates for improving data collection;**

(*c*) **Adopt a harmonized mechanism for gathering statistics on irregular migrants including through studies or estimated assessments when information is insufficient;**

(*d*) **Continue collaboration with relevant partners on analysis and interpretation of statistical data and flow;**

(*e*) **Ensure an adequate allocation of funds for the above purposes.**

Training in and dissemination of the Convention

(21) The Committee notes with interest that informational and educational materials on the Convention have been developed by the State party as well as by NGOs. However, the Committee is concerned that from the information received, the target groups for whom training programmes and material were developed remain unclear as well as how the dissemination of the Convention was carried out. The Committee notes that pre-departure seminars and orientation for Filipino workers promote the rights under the Convention but regrets that little information was provided on any existing assessments of the effectiveness of these sessions.

(22) **The Committee encourages the State party to:**

(*a*) **Carry out an evaluation of ongoing training programmes and information campaigns to ensure their effectiveness and impact on public officials working in the area of**

migration, including consular officials, border police officers, social workers, judges and prosecutors;

(*b*) Ensure orientation and pre-departure seminars for migrant workers with clear objectives, country-specific information and nationwide outreach using the rights-based approach;

(*c*) Work with civil society organizations and other relevant partners to disseminate information on migrants' rights under the Convention and accurate information to Filipino workers considering migrating abroad. Similarly, take measures to partner with the media;

(*d*) Ensure the sufficient allocation of funds for training and, in collaboration with relevant partners, including non-governmental organizations (NGOs), carry out capacity building training for the government agencies handling migration issues, such as the Overseas Workers Welfare Administration, Philippine Overseas Employment Agency, and the Department of Foreign Affairs.

2. General principles (arts. 7 and 83)

Non-discrimination

(23) The Committee notes with interest that the principle of non-discrimination exists de jure in the Philippine Constitution, RA 8042, as well as a number of legislative measures. The Committee is concerned however, that, in practice, foreign workers in the Philippines are granted rights only under certain conditions, such as reciprocity, which may not be in line with the Convention.

(24) **The Committee reiterates that the exercise of human rights is not based on the principle of reciprocity and recommends that the State party take the necessary steps to align its domestic legislation with the Convention.**

(25) Regarding Filipino workers abroad, the Committee notes the role of the Department of Foreign Affairs and the activities of the Legal Assistant for Migrant Workers' Affairs to pursue the rights on behalf of Filipino migrant workers, in case individual complaints are legally impossible. Moreover, the Committee notes with interest the Legal Assistance Fund that has been established for Filipino migrant workers but regrets that no sufficient information was provided regarding the issues that were dealt with and in which countries.

(26) **The Committee recommends that the State party continue its efforts to:**

(*a*) Continue and strengthen its activities to provide legal assistance to Filipino migrant workers;

(*b*) Inform Filipino migrant workers of the administrative and judicial remedies available to them through the Department of Foreign Affairs.

3. Human rights of all migrant workers and members of their families (arts. 8-35)

(27) While noting with appreciation the activities undertaken by the National Commission on the Role of Filipino Women (NCRFW) and the national legislation enacted to improve the situation of migrant Filipino women, the Committee notes with interest the prominent numbers of female migrant workers. Moreover, the Committee, like the Committee on Cultural, Economic and Social Rights, notes with concern that women are most often employed in gender-specific industries such as care givers, entertainers and domestic workers where they are vulnerable to physical, sexual, and verbal abuse, unpaid/delayed/underpaid wages, and may face inequitable working conditions.

(28) **The Committee urges the State party to continue its efforts to promote the enhancement and empowerment of migrant women facing situations of vulnerability by inter alia:**

(*a*) **Conducting a thorough assessment of the situation and taking concrete measures to address the feminization of migration comprehensively in its labour migration policies, including income of women in the informal sector, and minimal social protection for women;**

(*b*) **Negotiating more secure employment opportunities and terms and conditions for women in vulnerable sectors through bilateral agreements in those countries where discriminatory treatment and abuse are more frequent;**

(*c*) **Carrying out gender training and sensitization for government staff dealing with migration issues, in particular those providing legal and consular assistance to Filipino nationals abroad seeking justice against abuse in the workplace;**

(*d*) **Implementing the outcome document of the International Conference on Gender, Migration and Development called the *Manila Call to Action* as a tool for informed policy decision-making and advocacy;**

(*e*) **Liaising with local and international partner networks to provide services and support to migraats and to advocate for migrants' rights.**

(29) The Committee is concerned at the documented cases where embassy/consulate personnel abroad did not properly assist their nationals because the former were not sufficiently aware of processes in the host country. While noting the information provided by the delegation on the alternative dispute settlement mechanism, the Committee is concerned at information that Filipino migrants are unwilling to file cases of abuse by their employers abroad for lack of trust in the justice system or fear of retaliation and unfamiliarity with the redress possibilities.

(30) **The Committee recommends that the State party:**

(*a*) **Ensure that consular services respond effectively to the need for protection of Filipino migrant workers and members of their families;**

(*b*) Take measures to ensure that its embassy and consulate staff abroad are knowledgeable about the laws and procedures of the countries of employment of Filipino foreign workers, especially in those countries categorized as "highly problematic" by the DFA and the DOLE;

(*c*) Undertake regular performance and financial audits of government personnel and agencies dealing with migration issues and their progress monitored.

(31) The Committee notes with concern that, despite the State party's efforts to protect the rights of Filipino migrant workers abroad, abuse and exploitation continue, especially of women migrants and that these are underreported.

(32) **The Committee recommends that State party:**

(*a*) Conduct a review of bilateral and multilateral agreements, Memoranda of Understanding or other protective measures with countries of employment of Filipino foreign workers;

(*b*) In case that no bilateral agreement can be finalized, continue cooperation arrangements with countries receiving Filipino migrant workers in areas of mutual concern;

(*c*) Increase dissemination channels to increase awareness among migrant workers, especially women in domestic service, on the available mechanisms for bringing complaints against employers and so that all abuses, including ill-treatment, be investigated and punished;

(*d*) Provide adequate assistance through embassy and consulate staff abroad to migrant workers victims of the "sponsorship" or *kafalah* system especially for women domestic workers and most notably in the Gulf countries and endeavour to negotiate a reform or review of such a system with the relevant countries of destination.

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36-56)

(33) The Committee is concerned about the fact that restrictions exist on the exercise of foreign migrant workers lawfully residing in the Philippines to engage directly or indirectly in trade union activities, as this right is only recognised for those migrant workers who are lawfully residing and working in the Philippines if they are nationals of a country which grants the same or similar rights to Filipino workers. The Committee is concerned that holding the right to join and establish a trade union subject to reciprocity is in violation of the Convention.

(34) **The Committee reiterates the 2008 request by the ILO Committee of Experts on the Application of Conventions and Recommendations in relation to ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise that the State party take the necessary measures, including legislative amendments to sections 269 and 272 (b) of the Labour Code, to guarantee to all migrant workers and members of their families lawfully**

residing within the Philippines the right to join, form and to form part of the leadership of, associations and unions, in accordance with article 40 of the Convention on Migrant Workers, as well as with ILO Convention No. 87, not subject to reciprocity.

(35) The Committee appreciates that the Filipino migrant workers' right to participate in democratic decision-making processes is recognized under RA 8042. While also noting the efforts undertaken by the State party to facilitate the participation of migrant workers abroad in elections for President, Vice-President, Senators and Party-list representatives, the Committee is concerned that the pre-required "affidavit of Intent to Return to the Philippines within three years" for immigrants/permanent residents abroad may limit the exercise of their right to vote. Further, the Committee is concerned at the very small percentage of Filipino workers abroad that have registered to vote in elections.

(36) **The Committee encourages the State party to continue its efforts to:**

(*a*) Encourage Filipino workers abroad to register and participate in elections;

(*b*) Maintain a register of overseas voters and take additional steps to facilitate the exercise of voting rights by Filipino migrant workers residing abroad;

(*c*) Invite the Philippine Congress to consider the proposals to amend RA 9189 to delete the requirement of an "Affidavit of intent to return".

(37) The Committee appreciates the State party's efforts to enter into bilateral agreements with countries of destination with a view to promoting employment as well as the welfare and rights of migrant workers. However, the Committee is concerned that the provisions contained in bilateral agreements so far concluded do not sufficiently promote and protect the fundamental human rights of migrants.

(38) **The Committee recommends that the State party, to the extent possible, progressively mainstream relevant and appropriate provisions of the Convention into bilateral agreements.**

5. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64-71)

(39) The Committee notes with interest the labour migration policy implemented by the State party, with the Government playing a supportive and regulatory role. The Committee further notes the efforts taken by the State party to strengthen the Philippine Overseas Employment Agency and the Department of Foreign Affairs' handling of irregular migration. At the same time, the Committee is concerned about the large numbers of Filipino workers overstaying their visas and the continuing existence of irregular and undocumented Filipino migrants abroad, of which most are women serving as domestic workers, who may be more vulnerable to abuses.

(40) **The Committee recommends that the State party continue to provide assistance to irregular Filipino migrants in need of protection and:**

(*a*) **Step up its efforts to prevent irregular migration of Filipino nationals;**

(*b*) **Continue its efforts to secure cooperation agreements with host countries;**

(*c*) **Encourage collaboration of its consular services and Labour Attachés abroad and the countries which receive Filipino workers to promote sound, equitable, humane and lawful conditions for migrant workers.**

(41) While noting that the State party has increased the penalty for agencies with exorbitant placement fees, the Committee expresses concern at claims that private recruitment agencies continue to overcharge fees for their services and act as intermediaries for foreign recruiters, which may in certain instances, increase the vulnerability of migrants.

(42) **The Committee recommends that the State party review the role of private recruitment agencies and endorses the recommendation of the Special Rapporteur on the human rights of migrants to strengthen the existing government-regulated licensing system for recruitment agencies, migration regulation and control mechanisms.**

(43) The Committee notes with interest information given by the delegation on the State party's strategic reintegration programme for migrant workers returnees, including family members. Nevertheless, the Committee notes the lack of information available to the Committee on this programme.

(44) **The Committee encourages the State party to:**

(*a*) **Work in partnerships with all relevant partners to strengthen the existing reintegration programme, especially with regards to addressing brain drain and developing knowledge transfer initiatives or brain gain schemes;**

(*b*) **Allocate sufficient budget to reintegration programmes, and in particular to the reintegration centre which opened in 2007;**

(*c*) **Strengthen reintegration programmes in order to ensure migration gains and involvement of Filipino returnees in projects that can lead to job creation in the State party;**

(*d*) **Continue and strengthen skills, technical capacities and entrepreneurship trainings for preparing an eventual reintegration into the Philippines;**

(*e*) **Adopt measures in accordance with the principles of the Convention in considering setting up local institutional mechanisms to facilitate the voluntary return of migrant workers and members of their families as well as their durable social and cultural reintegration.**

(45) The Committee expresses concern over the situation of children and the negative impact on children whose parents have migrated abroad. Information presented before the Committee points to children with at least one parent working overseas living with loose family ties and performing worse in school, notably in the case of an absent mother. This is of concern to the Committee given that 50 per cent of all Filipino migrant workers are women.

(46) **The Committee encourages the State party to support a comprehensive study on the situation of children of migrant families, with the aim of developing adequate strategies to ensure their protection and the full enjoyment of their rights through, inter alia, community support programmes, education and information campaigns and school programmes. The Committee encourages the State party to continue its collaboration with non-governmental organizations (NGO) in favour of these children and their mothers.**

(47) While noting the significant efforts of the State party such as the recent convictions of traffickers and the "We are not for sale" campaign, the Committee is concerned about the significant number of Filipino workers abroad who are victims of trafficking. The Committee further regrets the very limited number of cases of filing, prosecution, and conviction of perpetrators of trafficking with many of those cases being dismissed at preliminary stages.

(48) **The Committee endorses the recommendations of the Committee on the Elimination of All Forms of Discrimination against Women in this regard and recommends that the State party:**

(*a*) **Evaluate the phenomenon of trafficking in persons and compile systematic disaggregated data with a view to better combating trafficking, especially of women and children;**

(*b*) **Vigorously ensure effective enforcement of anti-trafficking legislation and increase efforts to improve the record of prosecutions, convictions, and punishment for traffickers and public officials who profit from or are involved in trafficking and bring perpetrators to justice;**

(*c*) **Strengthen the Anti-Illegal recruitment campaign and provide adequate funding for the implementation of the National Strategic Plan of Action against Trafficking;**

(*d*) **Continue collaboration with all relevant partners to increase advocacy, information, education and overall public awareness activities. Likewise, continue its ongoing early detection and prevention activities;**

(*e*) **Coordinate and monitor the implementation of laws regarding forced labour and slavery, and continue training programmes in identifying and providing the necessary intervention and assistance to trafficked persons. Continue training of prosecutors to make them fully aware of the nuances of anti-trafficking law. Similarly, continue partnerships to increase technical capacity building and training of law enforcers, prosecutors and service providers;**

(f) **Continue partnership with national and international relevant partners, including NGOs to provide services to victims of trafficking.**

(49) The Committee notes the large number of government departments and attached agencies as well as legislation dedicated to migration issues, including RA 8042, the Philippine Overseas Employment Administration (POEA) and the Overseas Workers' Welfare Administration (OWWA). Nevertheless, the Committee is concerned that institutional responsibilities are spread among different ministries without a coordinating entity and about their limited means and capacity to fulfil their mandate in a proper manner and little coordination in the effective implementation of the promotion and protection of the rights of migrant workers.

(50) **The Committee recommends that, in order to improve institutional capacity to respond to problems affecting migrant workers, the State party simplify and streamline the institutional structure dealing with migration issues and allocate sufficient resources, human and financial, for agents within this structure to carry out their work efficiently. Furthermore, the Committee recommends that the State party guarantee broader participation of NGOs.**

6. Follow-up and dissemination

Follow-up

(51) The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to all relevant national and local authorities.

(52) The Committee encourages the State party to involve civil society organizations in the preparation of the State party's second report.

Dissemination

(53) The Committee likewise requests the State party to disseminate these concluding observations widely, including to public agencies and the judiciary, non-governmental organizations and other members of civil society, and to take steps to make them known to Filipino migrants abroad and foreign migrant workers residing or in transit in the Philippines.

7. Next periodic report

(54) The Committee invites the State party to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting (HRI/MC/2006/3 and Corr.1).

(55) The Committee notes that the State party's second periodic report is due on 1 July 2009. In the circumstances, the Committee requests the State party to submit its second periodic report not later than 1 May 2011.

Annex I

STATES THAT HAVE SIGNED, RATIFIED OR ACCEDED TO THE INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES AS AT 31 MARCH 2009

State	*Signature*	*Ratification accession*[a] *succession*[b]
Albania		5 June 2007[a]
Algeria		21 April 2005[a]
Argentina	10 August 2004	23 February 2007
Azerbaijan		11 January 1999[a]
Bangladesh	7 October 1998	
Belize		14 November 2001[a]
Benin	15 September 2005	
Bolivia		16 October 2000[a]
Bosnia and Herzegovina		13 December 1996[a]
Burkina Faso	16 November 2001	26 November 2003
Cambodia	27 September 2004	
Cape Verde		16 September 1997[a]
Chile	24 September 1993	21 March 2005
Colombia		24 May 1995[a]
Comoros	22 September 2000	
Congo	29 September 2008	
Ecuador		5 February 2002[a]
Egypt		19 February 1993[a]
El Salvador	13 September 2002	14 March 2003
Gabon	15 December 2004	
Ghana	7 September 2000	7 September 2000
Guatemala	7 September 2000	14 March 2003*
Guinea		7 September 2000[a]
Guinea-Bissau	12 September 2000	
Guyana	15 September 2005	
Honduras		9 August 2005[a]
Indonesia	22 September 2004	
Jamaica	25 September 2008	25 September 2008
Kyrgyzstan		29 September 2003[a]

State	*Signature*	*Ratification accession[a] succession[b]*
Lesotho	24 September 2004	16 September 2005
Liberia	22 September 2004	
Libyan Arab Jamahiriya		18 June 2004
Mali		5 June 2003
Mauritania		22 January 2007
Mexico	22 May 1991	8 March 1999**
Montenegro	23 October 2006[b]	
Morocco	15 August 1991	21 June 1993
Nicaragua		26 October 2005
Niger		18 March 2009
Paraguay	13 September 2000	23 September 2008
Peru	22 September 2004	14 September 2005
Philippines	15 November 1993	5 July 1995
Rwanda		15 December 2008
Sao Tome and Principe	6 September 2000	
Senegal		9 June 1999
Serbia	11 November 2004	
Seychelles		15 December 1994[a]
Sierra Leone	15 September 2000	
Sri Lanka		11 March 1996[a]
Syrian Arab Republic		2 June 2005
Tajikistan	7 September 2000	8 January 2002
Timor-Leste		30 January 2004[a]
Togo	15 November 2001	
Turkey	13 January 1999	27 September 2004
Uganda		14 November 1995[a]
Uruguay		15 February 2001[a]

Notes

* On 18 September 2007, Guatemala made the declaration recognizing the Committee's competence under articles 76 and 77 of the Convention.

** On 15 September 2008, Mexico made the declaration recognizing the Committee's competence under article 77 of the Convention.

Annex II

MEMBERSHIP OF THE COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

Name of the member	*Country of nationality*	*Term expires on 31 December*
Mr. Francisco ALBA	Mexico	2011
Mr. José Serrano BRILLANTES	Philippines	2009
Ms. Ana Elizabeth CUBIAS MEDINA	El Salvador	2011
Ms. Anamaría DIEGUEZ	Guatemala	2009
Mr. Ahmed Hassan EL-BORAI	Egypt	2011
Mr. Abdelhamid EL JAMRI	Morocco	2011
Mr. Prasad KARIYAWASAM	Sri Lanka	2009
Ms. Myriam POUSSI	Burkina Faso	2011
Mr. Mehmet SEVIM	Turkey	2009
Mr. Azad TAGHIZADE	Azerbaijan	2009

Composition of the Bureau

Chairperson:	Mr. Abdelhamid El Jamri
Vice-Chairpersons:	Mr. José Brillantes
	Ms. Anamaría Dieguez
	Mr. Azad Taghizade
Rapporteur:	Mr. Francisco Alba

Annex III

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 73 OF THE CONVENTION AS AT 1 MAY 2009

State party	*Type of report*	*Date due*	*Received*
Albania	Initial	1 October 2008	
Algeria	Initial	1 August 2006	3 June 2008
Argentina	Initial	1 June 2008	
Azerbaijan	Second periodic	1 May 2011	
Belize	Initial	1 July 2004	
Bolivia	Second periodic	1 July 2009	
Bosnia and Herzegovina	Second periodic	1 May 2011	
Burkina Faso	Initial	1 March 2005	
Cape Verde	Initial	1 July 2004	
Chile	Initial	1 July 2006	
Colombia	Second periodic	1 May 2011	
Ecuador	Second periodic	1 July 2009	
Egypt	Second periodic	1 July 2009	
El Salvador	Second periodic	1 December 2010	
Ghana	Initial	1 July 2004	
Guatemala	Initial	1 July 2004	
Guinea	Initial	1 July 2004	
Honduras	Initial	1 December 2006	
Jamaica	Initial	1 January 2010	
Kyrgyzstan	Initial	1 January 2005	
Lesotho	Initial	1 January 2007	
Libyan Arab Jamahiriya	Initial	1 October 2005	
Mali	Second periodic	1 October 2009	
Mauritania	Initial	1 May 2008	
Mexico	Second periodic	1 July 2009	
Morocco	Initial	1 July 2004	
Nicaragua	Initial	1 February 2007	
Niger	Initial	1 July 2010	
Paraguay	Initial	1 January 2010	
Peru	Initial	1 January 2007	
Philippines	Second periodic	1 May 2011	

State party	*Type of report*	*Date due*	*Received*
Rwanda	Initial	1 April 2010	
Senegal	Initial	1 July 2004	
Seychelles	Initial	1 July 2004	
Sri Lanka	Initial	1 July 2004	21 April 2008
Syrian Arab Republic	Second periodic	1 October 2011	
Tajikistan	Initial	1 July 2004	
Timor-Leste	Initial	1 May 2005	
Turkey	Initial	1 January 2006	
Uganda	Initial	1 July 2004	
Uruguay	Initial	1 July 2004	

Annex IV

LIST OF DOCUMENTS ISSUED OR TO BE ISSUED IN CONNECTION WITH THE NINTH AND TENTH SESSIONS OF THE COMMITTEE

CMW/C/9/1	Provisional agenda and annotations (ninth session of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families)
CMW/C/SR.88-97	Summary records of the ninth session of the Committee
CMW/C/10/1	Provisional agenda and annotations (tenth session of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families)
CMW/C/SR.98-117	Summary records of the tenth session of the Committee
CMW/C/SLV/1	Initial report of El Salvador
CMW/C/SLV/1/Q	List of issues: El Salvador
CMW/C/SLV/1/Q/Add.1	Written replies from the Government of El Salvador to the list of issues
CMW/C/SLV/CO/1	Concluding observations of the Committee on the initial report by El Salvador
CMW/C/AZE/1	Initial report of Azerbaijan
CMW/C/AZE/1/Q	List of issues: Azerbaijan
CMW/C/AZE/1/Q/Add.1	Written replies from the Government of Azerbaijan to the list of issues
CMW/C/AZE/CO/1	Concluding observations of the Committee on the initial report of Azerbaijan
CMW/C/COL/1	Initial report of Colombia
CMW/C/COL/1/Q	List of issues: Colombia
CMW/C/COL/1/Q/Add.1	Written replies from the Government of Colombia to the list of issues
CMW/C/COL/CO/1	Concluding observations of the Committee on the initial report by Colombia
CMW/C/BIH/1	Initial report of Bosnia Herzegovina

CMW/C/BIH/1/Q	List of issues: Bosnia Herzegovina
CMW/C/BIH/1/Q/Add.1	Written replies from the Government of Bosnia Herzegovina to the list of issues
CMW/C/BIH/CO/1	Concluding observations of the Committee on the initial report by Bosnia Herzegovina
CMW/C/PHL/1	Initial report of the Philippines
CMW/C/PHL/1/Q	List of issues: the Philippines
CMW/C/PHL/1/Q/Add.1	Written replies from the Government of the Philippines to the list of issues
CMW/C/PHL/CO/1	Concluding observations of the Committee on the initial report by the Philippines

Annex V

LIST OF PARTICIPANTS IN THE ROUND TABLE ON THE OCCASION OF INTERNATIONAL LABOUR DAY

Round table on the occasion of International Labour Day, held on Friday, 1 May 2009, from 10 a.m. to 1 p.m., at the Office of the United Nations High Commissioner for Human Rights

The right to freedom of association of migrant workers

Mr. Abdelhamid El Jamri
Chairman of the Committee on Migrant Workers

Mr. Ngonlardje Mbaidjol
Director, Special Adviser to the High Commissioner for Human Rights

Mrs. Cleopatra Doumbia-Henry
Director, NORMES, International Labour Organization

Ms. Wol-san Liem
International Solidarity Coordinator for the Migrants Trade Union (South Korea)

Mr. Marion Hellmann
Assistant Secretary-General, Building and Wood Workers' International

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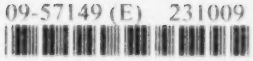

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